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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/348,566	07/07/1999	JAY S. WALKER	WD2-98-120	5411

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STAMFORD, CT 06905

EXAMINER

ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/348,566

Applicant(s)

WALKER ET AL.

Examiner

James Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 April 2003 has been entered.

Claims 1-24 and 26-102 are pending and will be examined.

Response to Amendment

Claims 1-102 were rejected in prior Office Actions under various combinations of Walker et al. (US Patent 6,249,772), Walker et al. (US Patent 6,085,169), Walker et al. (US Patent 6,193,155) and Walker et al. (US Patent 5,945,653).

Applicants amended their disclosures to state that this application is a CIP of

- 08/889,503 filed 07/08/1997 issued as US Patent 6,249,772 on 06/19/2001,
- 08/889,319 filed 07/08/1997 issued as US Patent 6,084,169 on 07/04/2000,
- 08/883,308 filed 06/26/1997 issued as US Patent 5,945,653 on 08/31/1999,
- 08/997,680 filed 11/23/1997 issued as US Patent 6,193,155 on 02/27/2001.

In view of the amendment, the above are disqualified as references against the present application for subject matter disclosed in those applications.

Response to Arguments

Applicant's arguments with respect to Claims 1-24 and 26-102 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-24 and 26-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scroggie et al. (US Patent 5,970,469) in view of Woolston (US Patent 5,845,265).

Scroggie discloses that buyers may order and purchase products from a seller over a communication network at a first price. See, for example, Fig. 14 and related text, showing buyers purchasing items over a network.

Buyers may take possession of the products at a retailer, different from the seller. For example, see references to buyers designating specific retailers for taking possession of the products, at least Col. 1, lines 35-65.

The retailer may offer the product for sale at a second price, since retailers may offer selected incentives. See, for example, Col. 3, lines 13-39.

Payment for products may take place over the network (see, for example, references to credit cards, check cashing card numbers, in the Abstract, Col. 4, lines 34-50). Payment for products may take place in-store.

Settlement payments to retailers via credit cards and check cashing cards take place over credit card clearing houses, well known to one of ordinary skill in the art at the time the invention was made.

Scroggie discloses subsidies. See, for example, references to rebates, in Abstract, and Col. 7, line 53-Col. 8, line 33.

Scroggie discloses food recipes. Foods are often perishable items, in that they must be consumed before they go bad. Penalties are increased costs to a buyer if he fails to meet certain conditions, for example, failure to pick up perishable food items within a certain period of time.

Penalties were well known to those of ordinary skill in the art at the time the invention was made. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Scroggie and knowledge generally available to one of ordinary skill in the art.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine Scroggie and knowledge generally available to one of ordinary skill in the art for the obvious reason that by providing penalties, sellers can assure themselves that they do not bear the burden of a buyer's delays.

Scroggie does not mention minimum profit or commissions. Woolston discloses profit margins (i.e., maximum and minimum profits), commissions.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Scroggie and Woolston to disclose commissions and profit margins. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Scroggie and Woolston to disclose commissions and profit margins for the obvious reason that incentives such as disclosed by Scroggie often include multiple ways to stimulate sales.

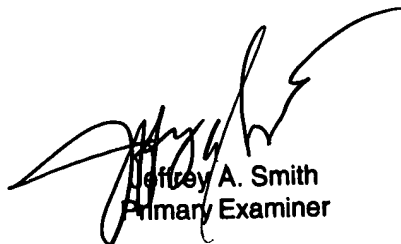
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8:30 am to 5:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

JZ
James Zurita
Patent Examiner
Art Unit 3625
20 September 2003


Jeffrey A. Smith
Primary Examiner